

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1008

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA :

-against- :

EDWARD GRIMES :

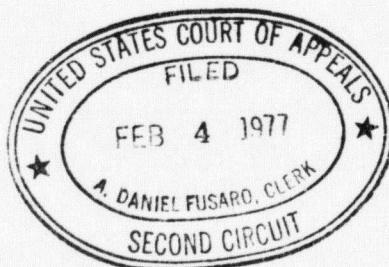
Defendant-Appellant :

-----X

B
P/S

APPENDIX

ABRAHAM SOLOMON
Attorney for Defendant-Appellant
85 Baxter Street
New York, New York 10013



PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET - U.S. District Court
OFFENSE NO. 0208 01 0802
DEFENDANT GRIMES, EDWARD
FELONY ☒ Misdemeanor ☐
U.S. District Office (LAST FIRST, MIDDLE)
Case Filed 10/07/76
76 0940 02
U.S. MAG. CASE NO. 76-1127

U.S. TITLE/SECTION 18:924(c)(1)
OFFENSES CHARGED Felony with handgun
ORIGINAL COUNTS 3&6
18:2113(a) Bank Robbery 1&4
18:2113(d) Armed Bank Robbery 2&5
18:924(c)(1) Felony with handgun 3&6
12/14
SUPERSEDING COUNTS
SENTENCE
Disposition of Charges 11-11-76
12-9-76
On All Charges
On Lesser Offenses
On Government Motion

II. KEY DATES & INTERVALS
ARREST or U.S. Custody began 9/30/76
Summons Served
First Appearance
INDICTMENT ☒ Information 10-7-76
Indict. Waived
Superseding Indictment ☒ 10-26-76
ARRAIGNMENT 10-14-76
1st Plea 10-14-76
Final Plea
TRIAL
Trial Set For
Voor Dire
Trial Began 11-10-76
Trial Ended 11-11-76
SENTENCE
Disposition of Charges 11-11-76
12-9-76
On All Charges
On Lesser Offenses
On Government Motion

MAGISTRATE
Search Warrant Issued
Summons Issued
Arrest Warrant issued
CC COMPLAINT 9/30/76
OFFENSE (In Complaint) 18 USC 2113(a) - BANK ROBBERY
INITIAL APPEARANCE DATE 9/30/76
PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled 10/8/76
Date Held
Type Number
OUTCOME
DISMISSED
HELD FOR GOV OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GOV OR OTHER PROCEEDING IN DISTRICT BEYOND

U.S. Attorney or Asst. David O'Connor 791-1941
ATTORNEYS Defense ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CGO
Alan Stein
29 Broadway,
New York, N.Y. 10006 952-1889

Show last names and suffix numbers of other defendants on same indictment/information.
DATE DOCUMENT NO. PROCEEDINGS EXCLUDABLE DELAY
9/30/76 Complaint filed, Legal Aid assigned. Defendant remanded into the custody of U.S. Marshal in lieu of \$25,000 cash or surety.
10/7/76 Indictment filed, 76 Cr. 940.....Pollack, J.
10-14-76 Deft. (atty. Alan Stein) pleads not guilty. Deft. continued remanded in lieu of bail as fixed by Magistrate at \$25,000 cash or surety. Assigned to Weinfeld, J. for all purposes.Duffy, J.
10-20-76 Filed notice of appearance of Alen S. Stim as Atty. for deft.
10-18-76 PTC held as to deft. Grimes, ----deft's motion to reduce \$25,000 bail is GRANTED to the extent of \$20,000 cash or surety. Hearing set for 10-19-76 at 11 A.M. Trial set for 10-26-76 at 10 A.M. in Rm. 906. Motion to sever is....DENIED.....WEINFELD, J.

OVER.

OFFICE - THE APPLICABLE COURT ENTRY SHOW IN SECTION IV. IN CASE OF UNRECORDED DELAY FOR 15 DAYS, DISMISS

DATE	IV PROCEEDINGS (continued)	PAGE TWO	V ENVELOPABLE DELAY
10-19-76	Hearing begun.....WEINFELD.J.		
10-20-76	Hearing cont'd ----Court rules against Simmons hearing held. Motions heard to suppress as to both drafts. Is DENIED.....WEINFELD.J.		
10-20-76	Deft. Grimes, ----Trial date set for 11/1/76 at 10 A.M. in Rm. 506.....WEINFELD.J.		
10-26-76	✓ Filed Superseding Indictment & referred to Weinfeld, J.		
11-4-76	Deft. appears (atty Joseph Stone appears) Deft. enters a plea of n/g to the indictment. Case set down for trial on Thurs. 11-11-76 at 10 A.M. in RM 2703. Deft. continued remanded in Lieu of bail previously fixed at \$20,000 cash/surety as fixed on Indictment 76 Cr. 940.....WEINFELD.J.		
11-11-76	✓ Filed CJA 20 Copy 2 approving payment to Allen Stim dated 11-9-76.....WEINFELD.J.		
11-10-76	Trial begun & continued as to deft. Edward Grimes, before Weinfeld, J. with a jury...WEINFELD.J.		
11-11-76	Trial continued & concluded Jury retires to begin deliberations at 3:10 P.M. 4:15 P.M. jury returns a verdict of guilty on all cts., PSI ordered. Sent. adj to Tues. 11-30-76 at 2:30 PM; Rm. 2703. Deft. continued remanded in lieu of bail Previously fixed at \$20,000 cash/surety as fixed on Indict. 76 Cr. 940.....WEINFELD.J.		
11-12-76	✓ Filed Govt's memorandum of law on the admissibility of evidence of similar criminal acts.		
11-12-76	✓ Filed Govt's memorandum of law in support of admissibility of evidence concerning Pre-Trial identifications of deft.		
11-15-76	Filed One Envelope to be sealed and impounded and placed in the cashier's vault. To be unsealed only upon order of this court.....So Ordered..WEINFELD.J.		
12-9-76	Govts. oral application for leave to file nolle prosequi as to deft. Edward Grimes on this original indictment is hereby Granted.....WEINFELD.J.		

CONT'D ON NEXT PAGE.

B

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.O. NUMBER	DATE	RECEIPT NUMBER	C.O. NUMBER

DATE	PROCEEDINGS
12-09-76	Filed Judgment & Commitment (Atty Joseph Stone, Esq.,) The deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS, on each of counts 2 & 5 to run concurrently with each other. FIVE (5) YEARS on each of counts 3 & 4 to run concurrently with each other and concurrent with the sentence imposed on counts 2 & 5. deft. convicted on counts 1 & 4 but not sentenced on these counts since they are encompassed in cts. 2 & 5.WEINFELD, J. Issued all copies.
12-17-76	Filed Magistrates Temporary Commitment.
12-21-76	Filed commitment WARDEN MCC ON 12-9-76
12-14-76	Filed notice of appeal from Judgment fld 12-9-76
12-29-76	Filed transcript of proceedings dtd 11/4/76, 11/10, 11/11/76
12/27/76	Filed transcript of proceedings dtd 11/10/76, 11/11/76

(S) 76 CR 940

22

• •

11

2

S 76 Cr.

U.S. DEPT. OF JUSTICE
FILED
OCT 23 1963
S. D. OF N. Y.

(Title 18, United States Code, Sections 2113(a) and 2.)

(Title 18, United States Code, Sections 2113(d) and 2.)

4

OCT 27 1976

COUNT THREE

The Grand Jury further charges:

On or about the 13th day of May, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant, and Alton Fields unlawfully, wilfully and knowingly did use and carry a firearm, to wit a handgun to commit and during the commission of a felony for which he may be prosecuted in a Court of the United States, to wit, the felonies charged in Counts One and Two of this Indictment.

(Title 18, United States Code, Sections 924(c)(1) and (2).)

COUNT FOUR

The Grand Jury further charges:

On or about the 2nd day of July, 1976 in the Southern District of New York, EDWARD GRIMES, the defendant, and another, unlawfully, wilfully and knowingly, by force, violence and intimidation, did take and attempt to take from the person and presence of another money and property in the approximate amount of \$15,110 which then belonged to and was in the care, custody, control, management and possession of the Chemical Bank, 395 Third Avenue, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 2nd day of July, 1976, in the Southern District of New York, EDWARD GRIMES, the defendant, and another, in committing and in attempting to commit the acts charge in Count Four of this Indictment did put in jeopardy the life of a

SMS:jm
76-3205
10-58

person and persons by the use of a dangerous weapon and device,
to wit, a handgun.

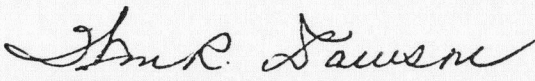
(Title 18, United States Code, Section 2113(d) and 2.)

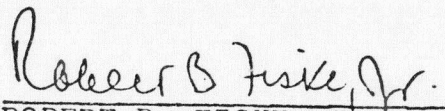
COUNT SIX

The Grand Jury further charges:

On or about the 2nd day of July, 1976, in the Southern
District of New York, EDWARD GRIMES, the defendant, and another,
unlawfully, wilfully and knowingly did use and carry a firearm,
to wit, a handgun, to commit and during the commission of a
felony for which he may be prosecuted in a Court of the United
States, to wit, the felony charged in Counts Four and Five of
this Indictment.

(Title 18, United States Code, Section 924(c)(1).)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

DEC 9 1976

DEFT (ATTY JOSEPH STONE PRESENT) SENTENCED.
DEFT IS HEREBY COMMITTED TO THE CUSTODY OF
THE ATTORNEY GENERAL FOR IMPRISONMENT FOR
A PERIOD OF TWELVE (12) YEARS ON EACH ON
COUNTS TWO (2) AND FIVE (5) TO RUN CONCURRENTLY
WITH EACH OTHER. AND FIVE (5) YEARS ON EACH
OF COUNTS THREE (3) AND SIX (6) TO RUN CON
CURRENTLY WITH EACH OTHER AND CONCURRENT
WITH SENTENCED IMPOSED ON CTS TWO (2) AND
FIVE (5). DEFT REMANDED. DEFT ADVISED OF
HIS RIGHT TO APPEAL.

DEFT CONVICTED ON CTS 1 & 4 WEINFELD, J.
BUT NOT SENTENCED SINCE THESE CTS
ARE ENCOMPASSED IN CTS 2 AND 5. *[Signature]*

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

EDWARD GRIMES,

Defendant.

INDICTMENT

Violation of Title 18, United
States Code, Sections 2113(a)(d)
924(c)(1)

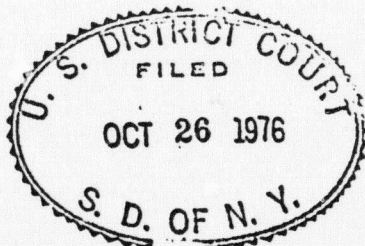
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

William R. Lawson

Foreman.



NOV 4 1976

Log line 1
20
DEFT APPEARS (ATTY JOSEPH STONE
APPEARS) DEFT ENTERS A PLEA OF N/G
TO THE INDICTMENT. CASE SET DOWN FOR
TRIAL ON THURS 11-11-76 AT 10AM IN RM
2703. DEFT CONTINUED REMANDED IN LIEU
OF BAIL PREVIOUSLY FIXED AT \$20,000
CASH/SURETY AS FIXED ON INDICT 76C 940
WEINFELD, J.

NOV 10 1976

TRIAL BEGUN & CONTINUED AS TO
DEFT EDWARD GRIMES BEFORE
WEINFELD, J. WITH A JURY

NOV 11 1976

TRIAL CONTINUED & CONCLUDED
JURY RETIRES TO BEGIN DELIBERATIONS
AT 3:10 PM.
4:15 PM JURY RETURNS A VERDICT OF
GUILTY ON ALL CTS. PSI ORDERED.
SENT ADJ TO. TUES 11/30/76 AT 2:30 PM; RM 27
DEFT CONTINUED REMANDED IN LIEU OF BAIL
PREVIOUSLY FIXED AT \$20,000 CASH/SURETY AS FIXED ON
INDICT 76C 940 WEINFELD, J.

US vs 1
Edward Grimes
S76 Cr 940 2
11/11/76
J. Weinfeld 3

GW1

179

CHARGE OF THE COURT

(Weinfeld, J.)

4 Members of the jury: You are about to under-
5 take your final function as jurors in this case.

6 The fact that this trial took a comparatively
7 short period of time does not betoken its importance.
8 Every case, whether it takes a day, a week, a month
9 to try is important. It is important to the government,
10 for the enforcement of the criminal laws is a matter of
11 prime concern to the community and to its protection.
12 Equally, it is important to the defendant who is charged
13 with the commission of a serious crime.

14 You are to discharge this final duty with a
15 complete attitude of fairness and impartiality and, as
16 I emphasized at the time of your selection as jurors,
17 without bias or prejudice either as to the defendant
18 or the government as parties to this litigation.

19 Let me add that the government is a party,
20 that the prosecution is brought in the name of the
21 United States of America, entitles it to no more con-
22 sideration than that accorded to any other party to a
23 litigation. By the same token, it is entitled to no
24 less consideration. All parties, government and
25 individuals alike, stand as equals at the bar of justice.

2 Your final role is to decide and pass upon
3 the fact issues. You are the sole and exclusive judges
4 of the facts. You pass upon the weight of the evidence;
5 you determine the credibility of witnesses; you resolve
6 such differences as there may be in testimony; and you
7 draw whatever reasonable inferences may be warranted
8 from the facts as you find them.

9 My final function is to instruct you as to
10 the law, and it is your duty to accept these instructions
11 of law and to apply them to the facts as you determine
12 them. The logical result of that application is the
13 verdict in the case.

14 With respect to any fact matter -- I mentioned
15 this just a little while ago -- it is your recollection
16 and yours alone that governs. Anything that counsel
17 may have said during the course of the trial, whether
18 in an opening statement or included in a question or
19 stated during the course of the trial or advanced in
20 the course of summation, is not to be taken in place of
21 your own independent recollection of the evidence.

22 So, too, anything the Court may have said
23 during the progress of the trial or may say during the
24 course of these instructions with respect to any fact
25 matters again is not to be taken in place of your independent

1 GW3

2 recollection. That governs at all times.

3 A few preliminary observations.

4 The first three counts of the indictment
5 name Edward Grimes and Alton Fields as participants in
6 the crimes charged therein. Only Edward Grimes, the
7 defendant, is on trial before you. The case against
8 Fields has been separated or severed, as we term it,
9 from that of Grimes. That is not to enter into your
10 judgment or deliberation. The matter of severance
11 where two or more persons are named in an indictment
12 is for the prosecution or the Court to decide, and the
13 fact that there has been a severance permits no infer-
14 ence, favorable or unfavorable, to either the defendant
15 or the prosecution.

16 Guilt is personal. The case against Grimes,
17 the defendant here on trial, stands or falls upon the
18 evidence against him or the lack of evidence.

19 A further preliminary instruction.

20 There are certain principles of law which
21 apply in every criminal case and to which I made reference
22 during the course of your selection as jurors, and I
23 repeat them now.

24 The indictment upon which the defendant is
25 brought to trial is merely an accusation or a charge.

GW4

It is the means of bringing a person accused of a crime to trial. It is no evidence or proof of the defendant's guilt. No weight is to be given to the fact that a grand jury returned an indictment against him.

The defendant has pleaded not guilty. Thus, the government has the burden of proving the charges against him beyond a reasonable doubt.

The defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the charges contained in the indictment against him. This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor as I instruct you now and remains in his favor during the course of your deliberations in the jury room. It is removed only if and when you, the members of the jury, are persuaded the government has sustained its burden of proof beyond a reasonable doubt.

The question that naturally comes up is what is a reasonable doubt. The words almost define themselves, that there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing the evidence. Reasonable

1 GW5

2 doubt is a doubt which appeals to your reason, your
3 common sense, your experience and your judgment. It
4 is not conjecture, whim or speculation. It is not
5 sympathy for a defendant. It is not an excuse to avoid
6 the performance of an unpleasant duty.

7 If, after a fair and impartial consideration
8 of all the evidence, you can candidly and honestly say
9 that you are not satisfied of the guilt of the defend-
10 ant, that you do not have an abiding conviction of the
11 defendant's guilt,--in sum, if you have such a doubt as
12 would cause you, as prudent persons, to hesitate before
13 acting in matters of importance to yourselves, then you
14 have a reasonable doubt, and in that circumstance it
15 would be your duty to acquit.

16 On the other hand, if, after such a fair
17 and impartial consideration of all the evidence, you
18 can, candidly and honestly, say that you do have an abiding
19 conviction of the defendant's guilt,--such a conviction
20 as you would be willing to act upon in important matters
21 in the affairs of your own life, then you have no reason-
22 able doubt, and in that circumstance it would be your
23 duty to convict.

24 One final word on this subject.

25 Reasonable doubt does not mean a positive

1 GW6

2 certainty or beyond all possible doubt. If that were
3 the rule, few men, however guilty they might be, would
4 be convicted. It is practically impossible for a
5 person to be absolutely and completely convinced of
6 any controverted fact which by its nature does not
7 lend itself to mathematical certainty.

8 In consequence, the law in a criminal case
9 is that it is sufficient if the guilt of the defendant
10 is established beyond a reasonable doubt, not beyond
11 all possible doubt.

12 Against that general background, we turn
13 to a consideration of the charges against the defendant.

14 The indictment is based upon the Federal
15 Bank Robbery Act, which was passed by Congress to pro-
16 tect the deposits of banks that are organized or
17 insured under federal laws and which defines various
18 crimes related to robbery or theft in such banks.

19 Specifically, the defendant is accused of
20 engaging in two separate bank robberies of the Chemical
21 Bank located at 395 Third Avenue, Manhattan, on two
22 separate occasions, first on May 13, 1976, and again
23 on July 2, 1976.

24 With respect to each robbery, he is charged
25 with three separate violations of law in three separate

1 GW7

2 counts. Briefly stated, the crimes charged against the
3 defendant fall within three general categories:

4 (1) Robbery of a bank by the use of force
5 and violence or intimidation to take money belonging to
6 a bank.

7 (2) Assault or putting in jeopardy the
8 life of any person by the use of a dangerous weapon
9 during the commission of the alleged robberies.

10 (3) The use of a firearm during the
11 commission of the alleged robberies.

12 Thus, the counts with respect to each alleged
13 robbery may be paired. Counts 1 and 4 charge the
14 robbery on each occasion; counts 2 and 5 charge the
15 assault and jeopardy on each occasion; and counts 3
16 and 6 charge the use of a firearm during the commission
17 of a crime.

18 Let us turn to the precise statute. Under
19 counts 1 and 4 of the indictment, a violation is charged
20 of Title 18, United States Code -- that is the federal
21 criminal laws -- Section 2113(a). That is one provision
22 of the Bank Robbery Act which in pertinent part provides:

23 "Whoever, by force and violence, or by
24 intimidation, takes . . . from the person or
25 presence of another any . . . money . . .

GW8

belonging to, or in the care, custody, control,
management, or possession of, any bank"
shall be guilty of a crime.

We now turn to the indictment. Count 1
reads:

"The Grand Jury charges:

"On or about the 13th day of May, 1976
in the Southern District of New York" -- Third Avenue
and 28th Street, that area I charge you is in the
Southern District of New York -- "Edward Grimes, the
defendant, and Alton Fields, unlawfully, wilfully and
knowingly, by force, violence and intimidation, did
take and attempt to take from the person and presence
of another money and property in the approximate amount
of \$12,852 which then belonged to and was in the care,
custody, control, management and possession of the
Chemical Bank, 395 Third Avenue, a bank the deposits
of which were then insured by the Federal Deposit
Insurance Corporation."

Now, the fourth count, using the same language,
makes the charge with respect to an alleged crime that
occurred on the 2nd day of July, 1976, and the amount
on that occasion is set forth as \$15,110.

In order to sustain the charge under each

1 GW9

2 count, the government must establish beyond a reasonable
3 doubt as to the defendant Grimes, the defendant on trial,
4 the following essential elements:

5 (1) That on or about the date set forth
6 therein the Chemical Bank, at 395 Third Avenue, New
7 York, New York, was a bank the deposits of which were
8 insured by the Federal Deposit Insurance Corporation.

9 That has been stipulated by the defense.
10 However, since it is an essential element you must so
11 find beyond a reasonable doubt.

12 (2) That on or about the date set forth
13 in the count you are considering, the defendant took
14 money that belonged to or was in the care, custody,
15 control, management or possession of the bank or that
16 he aided and abetted another person to do so.

17 I shall presently refer to this reference
18 to aiding and abetting.

19 It is not necessary that the government
20 prove the precise amount stolen was the amount specified
21 in the indictment. However, no dispute exists that the
22 amount set forth in the indictment is correct.

23 (3) That the money was taken from the
24 person or presence of one or more persons other than
25 the defendant, namely, employees of the bank.

GW10

(4) That the defendant accomplished this by force and violence or by intimidation.

Force, violence and intimidation are used in their ordinary sense.

The government is not required to show that force and violence were actually used against anyone if it proves beyond a reasonable doubt that the taking was the result of intimidation, that is, the result of placing another person or persons in fear.

Intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary run of human beings.

If the proof shows conduct which would normally be expected to generate fear, then it is not necessary that those affected should actually have experienced some terror or panic or hysteria.

Here the government relies upon evidence that these were armed robberies involving the use of a gun or guns.

The final element is that the defendant acted wilfully, that is, that his actions were deliberate and purposeful and committed with specific intent to do that which the law forbids, that is to say, as it is

1 GW11

2 sometimes expressed, with evil motive or bad purpose
3 either to disobey or disregard the law.

4 You will recall that just a little while
5 ago I said that one of the elements the government must
6 establish is that the defendant took money that belonged
7 to the bank or that he aided and abetted another person
8 to do so.

9 It is not necessary that the government
10 prove that Grimes personally committed every act
11 constituting the crime. For example, the government
12 is not required to establish that he physically took
13 money from the bank or that he himself used a gun,
14 although it does contend that these were the exact
15 positions, in reverse, on the two occasions.

16 Thus, where two or more persons are charged
17 with the commission of a crime, the guilt of an accused
18 may be established without proof that each participant
19 did every act constituting the offense.

20 This concept is based upon another federal
21 statute known as the Aiding and Abetting Law, which
22 provides:

23 "Whoever commits an offense against the
24 United States, or aids, abets, counsels,
25 commands, induces or procures its commission,

is punishable as a principal."

In order to aid or abet another to commit a crime, it is enough that a defendant in some way knowingly associate himself with and further the illegal venture, intending by some action of his own to make it succeed, that he have a stake in its outcome.

In other words, if one, fully aware of what he is doing, plays a significant role and facilitates an act prohibited by law, he is equally guilty with the party or person who directly and physically performs the illegal act even though the latter may have played a major or greater role in the commission of the crime.

Therefore, if you find beyond a reasonable doubt with respect to any count of the indictment that the defendant committed the robbery charged or that he aided and abetted another in its commission, you have sufficient upon which to find him guilty, provided, of course, the government has sustained all essential elements of the crime charged.

Now let us turn to counts 2 and 5. These charge a violation of 18 U.S.C. Section 2113(d), another section of the Bank Robbery Act, and in pertinent part it provides as follows:

"However, in committing . . . any offense

defined in subsection (a) of this section" --
namely, bank robbery, the one I read to you
previously -- "assaults any person, or puts in
jeopardy the life of any person by the use of a
dangerous weapon or device . . ."

is guilty of a crime.

In substance, this section of the law makes
it a separate and distinct offense if in the commission
of a bank robbery a person is assaulted or his life put
in jeopardy by the use of a dangerous weapon.

Now, count 2 reads as follows:

"The Grand Jury further charges:

"On or about the 13th day of May, 1976, in
the Southern District of New York, Edward Grimes, the
defendant, and Alton Fields in committing and in attempting
to commit the acts charged in count 1 of this indictment,
did put in jeopardy the life of a person and persons
by the use of a dangerous weapon and device, to wit,
a handgun."

Now, again count 5 parallels the same allegation
as against the defendant Grimes as I have just read to
you except the date set forth therein is the 2nd day
of July and again the amount is different.

In order to find the defendant Grimes guilty

1 GW14

2 on count 2, you must find that he committed the crime
3 charged in count 1. Similarly, to find him guilty on
4 count 5, you must find that he committed the crime charged
5 in count 4.

6 In addition to the essential elements pre-
7 viously mentioned to sustain these charges, you must
8 find an additional element, and that is that the defendant
9 assaulted one or more persons or put one or more persons'
10 lives in jeopardy by the use of a dangerous weapon,
11 specifically, a firearm, or that he aided and abetted
12 someone else in so doing.

13 Now, an assault is an unlawful attempt or
14 threat to do physical harm to another, causing a
15 present fear of immediate physical injury. An assault
16 may be committed without touching or striking or doing
17 bodily harm to the intended victim.

18 Thus, the flourishing or pointing or showing
19 a pistol or a gun at another person for the purpose of
20 putting that other person in fear is sufficient to con-
21 stitute an assault.

22 However, to put a person in jeopardy is to
23 expose him to a serious risk of danger that he will be
24 seriously injured by the use of a dangerous weapon.

25 To justify such a finding, you must find

1 GW15

2 beyond a reasonable doubt that the defendant or any person
3 acting in concert with him carried a firearm. It is
4 not essential to such a finding that there be direct
5 evidence that the firearm was in fact loaded. When
6 one is engaged in the commission of a robbery and displays
7 a gun to back up his demand, he intends that the victim
8 believe it is loaded, and in that circumstance you, the
9 jury, may infer that in fact it was loaded and capable
10 of inflicting serious or deadly injury by the one who
11 employed it.

12 To support this element under counts 2 and
13 5, the government has offered testimony that on each
14 occasion at least one of the holdup men had a gun which
15 he brandished and ordered those in the back to remain
16 silent.

17 It is not necessary for the government to
18 prove both an assault and putting the life of any person
19 in jeopardy. Either one is sufficient, although the
20 government contends it has established both.

21 There are two other counts to be considered,
22 each one applying to each separate alleged holdup.
23 Here another law comes into play which relates to the
24 use of firearms in the commission of a felony which
25 may be prosecuted in a court of the United States.

GW16

I should instruct you that counts 1 and 2 and counts 4 and 5 are federal felonies.

The statute reads as follows:

"Whoever --

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States . . ."
is guilty of a crime.

Based upon this statute, counts 3 and 6 charge:

"The Grand Jury further charges:

"On or about the 13th day of May, 1976, in the Southern District of New York, Edward Grimes, the defendant, and Alton Fields, unlawfully, wilfully and knowingly, did use and carry a firearm, to wit, a handgun, to commit and during the commission of a felony for which he may be prosecuted in a court of the United States, to wit, the felonies charged in counts 1 and 2 of this indictment."

The parallel count 6 which relates to the alleged offense of July 2nd contains a similar charge against the defendant Grimes except again the date refers to July 2nd.

To find the defendant Grimes guilty under

1 GW17

2 these counts, you must find beyond a reasonable doubt
3 each of the following elements:

4 (1) That for count 3 the defendant committed
5 the crime charged in counts 1 or 2 of the indictment,
6 and for count 6, he committed the crime charged in
7 counts 4 or 5.

8 (2) That on or about the date specified
9 in the particular count you are considering, the defend-
10 ant Grimes or another acting in concert with him used
11 a firearm, a gun, to commit the particular robbery
12 involved in that count. The firearm need not have
13 been fired but must have been used by the defendant
14 or another acting in concert with him in some manner
15 to enable or assist him or them to commit the robbery.

16 (3) That the defendant acted knowingly
17 and wilfully.

18 As I have already indicated before, to
19 convict the defendant under any count, you must find
20 beyond a reasonable doubt that he acted knowingly or
21 wilfully.

22 An act is done knowingly if it is done
23 voluntarily and purposely and not because of a mistake,
24 accident, inadvertence or negligence or for some other
25 innocent reason.

GW18

An act is wilful if it is done knowingly, deliberately, as I have already stated and is sometimes expressed, with a bad motive or evil purpose.

In determining whether the defendant acted knowingly or wilfully, it is not necessary for the government to establish that the defendant knew that he was breaking any particular law or any particular rule.

Knowledge and wilfulness of the defendant need not be proved by direct testimony of a witness. Indeed, such proof is rarely available. Like any other fact, it may be established by circumstantial evidence. The significant fact is the defendant's state of mind.

I often instruct juries that the state of mind of a man is as much a fact as the state of his digestion. That is the fact issue you are called upon to decide.

Medical science has not yet devised an instrument whereby we can go back over a period of time and determine the state of a man's mind as of the time of the occurrence of a given act. This is usually proved by circumstantial evidence--all the acts and conduct in their place and all the surrounding circumstances and the logical inferences to be drawn therefrom.

GW19

The government, in addition to testimony of its witnesses which it offered as direct evidence, also relies upon an admission readily made by the defendant following his arrest when he was interrogated by the agents for the FBI.

In this connection, the government refers to evidence that the defendant made statements to the agents of the FBI after he was arrested that he knew Alton Fields, who is named as a co-defendant in the first three counts.

If you find the defendant made such statements voluntarily after having been advised of his constitutional right not to make any statement, and if he did, that any such statement could be used against him and, further, that he was advised of his right to counsel and, indeed, the defendant has stipulated that he was so advised of his constitutional right, then you may give the statement such weight as you believe it deserves after considering all the circumstances which were developed during the course of the trial.

Whether or not evidence of a defendant's voluntary statement points to consciousness of guilt and the significance, if any, to be attached to any such evidence is solely for your determination.

1 GW20

2 You are aware that the basic controverted fact
3 in this case is identity,, that is, is the defendant
4 Edward Grimes one of the two men who committed the acts
5 referred to at the Chemical Bank at 395 Third Avenue
6 on May 13 and July 2, 1976.

7 The hard core of the case is the issue of
8 identification. The case under the separate charges
9 stands or falls on that issue.

10 The government relies upon direct and circum-
11 stantial evidence on the issue of identity.

12 Direct evidence is where a witness testifies
13 to what he or she saw, heard or observed, what he or she
14 knows of his or her own knowledge, something which comes
15 by virtue of his or her senses.

16 Here the government has presented the testi-
17 mony of bank employees who were in the bank, one of
18 whom identified the defendant as one of the participants
19 in the holdup on May 13, and another who identified
20 him as such a participant on July 2.

21 In addition to this direct evidence, the
22 government relies upon circumstantial evidence.

23 Circumstantial evidence is evidence of facts
24 and circumstances from which one may infer connected
25 events which reasonably follow in terms of the common

1 GW21

2 experience of mankind.

3 Circumstantial evidence, if believed, is
4 of no less value than direct evidence, for in either
5 case you must be convinced beyond a reasonable doubt
6 of the guilt of the defendant.

7 The government relies upon proof of another
8 bank robbery in which the defendant allegedly participated
9 and which, according to the government's contention,
10 followed the basic pattern of the holdup at the Chemical
11 Bank on May 13 and July 2.

12 I repeat an instruction given you at the
13 time of the admission of this evidence.

14 Ordinarily, evidence of other crimes allegedly
15 committed by an accused which are not charged in the
16 indictment is not admissible in evidence. There are,
17 however limited exceptions.

18 Thus, where identification, intent or modus
19 operandi of a crime--that is, a method of operation
20 is at issue, proof of similar acts, conduct or crimes
21 committed around or about the time of the crimes charged
22 in the indictment may be received in evidence.

23 However, it is received strictly limited to
24 such issues as identification, intent or a common method
25 of operation, and may be considered for no other purpose.

1 GW22

2 In no respect may it be considered as evidence that the
3 defendant is of bad character or of criminal propensity.

4 If you find beyond a reasonable doubt that
5 such acts or crimes did occur, then you may consider it
6 as probative on the issue of identification, intent or
7 a distinctive method of operation.

8 As you know, the government contends that
9 the participants in and the method of holdup was
10 basically the same in all three instances, that is,
11 the two robberies referred to in the indictment and the
12 robbery in Queens.

13 The defendant, in resisting the government's
14 case, attacks the reliability of the government witnesses'
15 identification. He points to inconsistencies in their
16 testimony and to prior descriptions. He also relies
17 upon the presumption of innocence.

18 The case has been of extremely short duration.
19 Counsel for the government and defense have just summed
20 up and urged upon you their respective contentions and
21 what the evidence has established or failed to establish
22 and the inferences to be drawn from the evidence, and it
23 would be needless repetition for the Court to review in
24 detail the testimony of each witness who testified.
25 But I believe, as I told you immediately after your

1 GW23

2 selection as jurors, the determination of what inferences
3 are to be drawn from the evidence, whether evidence has
4 established or failed to establish a fact, is exclusively
5 for your determination.

6 I have not attempted to review the evidence
7 nor the contentions that have been pressed upon you.
8 You will, of course, consider all the evidence in reaching
9 your determination on the vital issue of identity.

10 I believe several of the witnesses who testified, one
11 with respect to the May 13th incident, the other July
12 2nd, that they were positive in their identification.
13 However, the law does not require that identification of
14 a defendant charged with a crime be positive beyond
15 a shadow of doubt. It does require that identification
16 be established beyond a reasonable doubt.

17 The sufficiency of the evidence of identifica-
18 tion is for you, the members of the jury, to determine.
19 And here you are called upon to make a fact determination.
20 How do you determine where the truth lies, what the
21 fact is, what you should accept as credible?

22 I mentioned at the very start of the trial
23 before you heard a single word of testimony that it was
24 important for you not only to listen but to look at and
25 observe the witnesses as they testified. Your determination

1 GW24

2 of the credibility of a witness very largely depends
3 on the impression that the witness made upon you as to
4 whether or not he or she was giving you a truthful or
5 accurate version of what occurred.

6 I often say to jurors when you walk into this
7 courtroom and sit in the jury box, while the trial is
8 going on or while you are deliberating in the jury room
9 you have with you your common sense, your good judgment
10 and your experience.

11 The degree of credit to be given a witness
12 should be determined by his or her own demeanor, his
13 relation to the controversy and the party, any bias or
14 impartiality, the reasonableness of the statements or the
15 strength or weakness of recollection viewed in the light
16 of all other testimony and the attendant circumstances
17 of the case.

18 How did the witness impress you? Did his
19 or her version appear straightforward, candid, or did
20 the witness try to hide some of the facts? Is there
21 a motive to testify falsely? In other words, what you
22 did, to use the vernacular, is to size up a witness just
23 as you would do in any important matter where you are
24 undertaking to determine whether or not a person is
25 reliable, believable and credible.

1 GW25

2 The ultimate question for you to decide in
3 passing upon credibility is: Did the witness tell the
4 truth upon this witness stand before you? And it is
5 for you to say whether his or her testimony at the trial
6 is credible in the light of his or her demeanor, his
7 or her explanation and all the evidence in the case.

8 The defendant has not testified. This is
9 his absolute right, and in no respect may be considered
10 by you as evidence against him or as a basis for any
11 presumption or inference unfavorable to him. You must
12 not permit that fact to weight in the slightest degree
13 against him, nor should it enter into your deliberations
14 or discussions.

15 Now, if you find that any witness -- and this
16 applies to all -- has wilfully testified falsely as
17 to any material fact, you have a right to reject the
18 testimony of that witness in totality or to accept only
19 that part or portion which commends itself to your belief
20 or which you may find corroborated by other evidence in
21 the case.

22 The guilt or innocence of the defendant on
23 trial before you is for you and you alone to decide.
24 The government to prevail must prove the essential elements
25 by the required degree of proof as already explained in

1 GW26

2 the instructions. If it succeeds, your verdict should
3 be guilty. If it fails, it should be not guilty.

4 You must consider each count in the indictment
5 separately as if each were the sole charge against the
6 defendant. Thus, your verdict may be guilty on all
7 counts, it may be not guilty on all counts, and it may
8 be guilty on one or more counts and not guilty on the
9 remaining counts, as the case may be.

10 Your reported verdict in the instance of
11 each count must be unanimous.

12 Your function is to weigh the evidence in
13 the case and to determine the guilt or the innocence of
14 the defendant, as I have said so many times during the
15 selection of jurors, solely and only on the evidence
16 presented in this courtroom and the Court's instructions
17 as to the law.

18 Under your oath as jurors, if the evidence
19 warrants a verdict of guilty, you cannot allow a con-
20 sideration of the sentence which may be imposed to enter
21 into your deliberations or to influence your judgment
22 in any way. The imposition of sentence is the sole
23 responsibility of the Court in the event there is a
24 conviction.

25 Each juror is entitled to his or her own

1 GW27

2 opinion. Each should, however, exchange views with
3 fellow jurors. That is the very purpose of jury delibera-
4 tion, for the jurors to discuss and consider the evidence,
5 to listen to the arguments of one another and to present
6 your individual views, to consult with one another and
7 reach an agreement based solely and only on the evidence.

8 Each juror must decide the case for himself
9 or herself after consideration of the twelve jurors
10 of the evidence in the case.

11 Now, if during the course of deliberations
12 you should have a point of view that differs from that
13 of fellow jurors and after further consideration and
14 discussion you are persuaded that an originally-held
15 point of view should be changed, there is no reason why
16 you should not do so, provided, however, always your
17 ultimate vote reflects your conscientious judgment as
18 to how the case should be decided.

19 I think that you might remain in your seats.
20 I will hear counsel, if you want to come up.

21 MR. STONE: No requests or exceptions.

22 MR. SCHATZ: Acceptable to the government.

1
2 THE CLERK: Marshal, please step forward.

3 (Marshal sworn)

4 THE COURT: Now, we have two alternates -- you
5 don't need this on the record.

6 (Discussion off the record.)

7 THE COURT: Mr. Stone, look at this copy of the
8 indictment, please.

9 MR. STONE: Agreeable, your Honor. I agree
10 all the exhibits the jury can have if they request them.

11 MR. SCHATZ: Of course, your Honor.

12 THE COURT: All right, you may go with the
13 marshals.

14 (At 3:08 P.M. the jury retired to deliberate.)

15 MR. STONE: I received 3500 material for each
16 witness that testified.

17 MR. SCHATZ: And that includes the following
18 witnesses. If Mr. Stone disagrees with me at any point
19 he will so state.

20 3501 is Beulah McKinney and that consists
21 of 3501A through 3501G. That is a number of documents.

22 Again 3502A through 3502E, which consists
23 of a large number of documents pertaining to David Faith's
24 testimony.

25 In addition, Government Exhibit 3503A through

3503B, documents pertaining to Bernard Ellenberg's testimony.

Government Exhibit 3504A through 3504C, which pertains to Kenneth O'Brien's testimony.

The next is 3505A through 3505I which pertains to John Holmes' testimony.

Next is 3507A through 3507GGGG which pertains to Agent Lagatol and his investigation.

Also handed over 3508A through 3508D which refers to Mr. Garber, who did not testify.

I also hand over 3510A which pertains to the testimony of Mr. McGinnis, who was not called, and 3511A, which refers to the testimony of Mr. Todd who was not called and 3512A and B which pertains to testimony of Mr. Carbone, who was not called. I also turned over Government's Exhibits 3513A through C which pertains to Verdell Stennett and I have also handed over 3515A through D.

Mr. Stone, I just completed summarizing the 3500 material I handed over. Is there any dispute about that.

MR. STONE: There is no dispute and I would like to hand it back.

MR. SCHATZ: I have also given Mr. Stone various statements and advice of rights forms pertaining to the defendant Grimes. That includes both oral statements and

2

written statements. Is that correct, Mr. Stone?

3

MR. STONE: That's correct. I have not made any objection on the record to any of the discovery proceedings.

5

(Recess)

6

(At 4 P.M. in robing room)

7

THE COURT: I have a note from the jury which reads: "All pictures, diagrams."

9

Counsel have all the exhibits ready?

10

MR. SCHATZ: Yes.

11

THE COURT: Check them with one another and the clerk will see they get into the jury room.

13

MR. STONE: Can we agree to give all future exhibits or do you want to come down?

15

THE COURT: I always want a record. You are the lawyer in the case now. In case there is another lawyer, there might be a problem.

18

(Court Exhibit 1 marked.)

19

(At 4:25 P.M., the jury returned to the courtroom.)

20

THE CLERK: Members of the jury, please answer to your presence as your name is called.

22

(Jury roll call)

23

THE CLERK: Mr. Foreman, has the jury agreed on a verdict?

25

THE FOREMAN: Yes.

1
2 THE CLERK: How do you find?

3 THE FOREMAN: Guilty on all counts unanimously.

4 THE CLERK: Mr. Foreman, listen to your verdict
5 as it stands recorded. You say you find the defendant
6 Grimes guilty as charged and so say you all?

7 THE FOREMAN: Yes.

8 THE COURT: I will hold the jurors just for
9 a few moments. My recollection is that this is your first
10 jury experience for most of you. First I want to say it
11 was evident to me, as I mentioned to the two alternates
12 when I discharged them, that you paid extremely close,
13 indeed, rapt attention, to each witness as he or she
14 testified and that you were extremely conscientious jurors.

15 The other thing I want to say is this, especially
16 to those who are serving as jurors for the first time.

17 Over the years the practice has grown up where
18 judges at the end of a trial when a jury returns a verdict
19 thank the jurors for their services or for their verdict.
20 Since I have had a very firm and fixed policy ever since
21 I have been in the court, now in its 27th year, of never
22 thanking a jury for a verdict it renders, I don't want
23 you to leave the courtroom wondering why I haven't conformed
24 to this pattern.

25 I have a very definite reason for it. As jurors,

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT

EDWARD GRIMES

DOCKET NO.

S-76 Cr 940(EW)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
DECEMBER 9 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

JOSEPH STONE, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, force, violence and intimidation, did take and attempt to take from the person & presence of another money & property which belonged to & was in the care, custody, control, management & possession of a bank, the deposits of which were then insured by the F.D.I.C., & did put in jeopardy the life of a person & persons by the use of a dangerous weapon & device to wit, a handgun. (T.18,USC, §§2113(a)(d) & 2.). And unlawfully, wilfully & knowingly did use & carry a firearm in the commission of a felony. (T.18,USC, §924(c)(1)). as charged.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS, on each of counts 2 & 5 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **TWELVE (12)**
YEARS, on each of counts 2 & 5 to run concurrently with each other.

-AND-

FIVE(5) YEARS on each of counts 3 & 6 to run concurrently with each other and concurrent with the sentence imposed on counts 2 & 5.

Defendant convicted on counts 1 & 4 but not sentenced on these counts since they are encompassed in cts 2 & 5.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

DEC 10 1976

COMMITMENT
RECOMMEN-
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

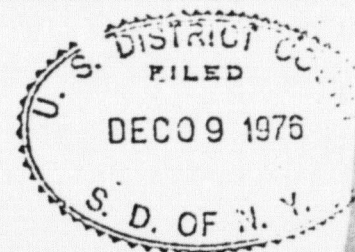
SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Edward Weitzel
EDWARD WEITZEL

Date **DECEMBER 9, 1976**



E

Court's Comment

On pages 11 & 12 on the day of Sentence the following observations were made by the Court.

The Court

"You know, Grimes, I think one of your troubles is you are not coming to grips with reality. You have an easy and quick excuse for every wrongful act you have committed and the result has been you are a fairly young man, you have spent the better part of your adult life in prison and you are going to spend another portion of it right now.

"I think you would be much better off if you acknowledged your wrongful conduct. I am not saying you should with respect to this offense because you are insisting your innocence, although the evidence in the Court's view was such that the jury was fully justified in its verdict in this case.

I am making no comment on that except to say that the jury had substantial evidence upon which to return the verdict that it did in this case, but I don't think you are being honest with yourself.

You tell me you had a sawed-off shotgun on the wall. For what? For Exhibition purposes. You know, there used to be an expression many years ago, tell it to the Marines."

COPY RECEIVED
ROBERT M. ROSEN
FEB 4 1977
NEW YORK